IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2038 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRABHUDAS RANCHHODDAS PATEL SINCE DECEASED BY HIS HEIRS

Versus

CHHAGANBHAI K. PATEL

Appearance:

Ms. D.T.Shah for Petitioners

Mr. Nagarkar for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/03/2000

ORAL JUDGEMENT

#. Present revision application has been filed by the original defendant against whom the respondent landlord had filed Rent Suit No.2674 of 1975 in the Court of Small Causes at Vadodara. The said suit was filed by the plaintiff on the ground that he is the owner of the suit premises C.S.No.2/7-305 situated in Kadavasheri Ahmedbadi

pole in the city of Baroda. Suit premises originally belonged to one Samratben and the plaintiff has purchased the same from her under a sale deed dated 29.3.1975. It is the case of the plaintiff that the defendant is a tenant of the suit premises consists of one room and osri on the ground floor and that the rent of the suit premises is Rs.9/- p.m. According to the plaintiff the defendant is in arrears of rent from 29.3.74 to 28.12.74 and therefore, demand notice was served on the defendant on 3.1.75. Defendant having failed to comply with the the same, the plaintiff ultimately filed the said suit for possession as well as arrears of rent.

#. The defendant appeared in the suit and filed his written statement at exh.14. It is the say of the defendant that he was not informed about the purchase of the property by the present plaintiff from said Samratben and that he paid the rent to the original owner Samratben till 29.12.74. The defendant admitted the receipt of the suit notice. But according to the defendant the suit notice was not legal and valid. Defendant also stated in the written statement that the standard rent of the premises should be Rs.5/-.

#. The Trial Court framed various issues at exh.18 and thereafter after recording the evidence and hearing the arguments of both the sides came to the conclusion that the plaintiffs have been able to prove that the defendant was in arrears of rent for more than six months from 29.3.1974 28.2.75 and that the standard rent of the premises is Rs.9/- p.m. Accordingly the Trial Court passed a decree for possession.

#. The defendant challenged the said decree by way of filing Regular Civil Appeal No.11 of 1980 before District Judge, Vadodara . The learned Extra Assistant Judge after hearing the arguments of the respective parties, dismissed the said appeal and decree for possession passed by the Trial Court was confirmed.

#. Aforesaid judgment and order of the Appellate Court is impugned in this revision application.

#. Looking to the evidence on record it is clear that the tenant had not sent any reply to the statutory notice given by the plaintiff in which arrears of rent was demanded form the defendant-tenant. The case of the defendant tenant is that he had paid the rent to the original owner, is not at all believable. It is not in dispute that the original landlord Samrathben had served

a notice upon the defendant at exh.46 by way of registered Post and even the defendant had also admitted the said fact. Defendant was clearly informed about the sale of the suit property in favour of the present plaintiff. The learned Appellate Judge has given detailed reasoning as to how the aforesaid say of the defendant-tenant is not believable in para 8 of his judgment. It is the say of the defendant that he had paid the rent to the original owner Samrathben but she had not given rent receipt for the same. In para 21 of his cross examination the defendant had admitted that he had never paid rent to Samratben without rent receipt except regarding last payment which was made to said Samratben for the period in question. Aforesaid conduct of defendant was found to be absolutely doubtful and it was found that the say of the defendant was not trustworthy. If , really the defendant-tenant had paid the rent to the earlier owner, the defendant would not miss to point out the said fact by replying the suit notice. The defendant having received the suit notice has not even given any reply. The Appellate Court, therefore, has found the say of the defendant-tenant as not true and it was found that the evidence of the defendant is not convincing and believable. In view of the detailed reasoning given by the Appellate Court, it cannot be said that there is any error of law on the part of the Appellate Court.

#. In that view of the matter it is clear that if the rent is not paid within one month of the receipt of the suit notice, then the case would fall under section 12(3)(a) of the Bombay Rent Act as laid down by the Supreme Court in the case of Arjun Khiamal Makhijani vs. Jamnadas C. Tuliani & ors. reported in 31 (1) GLR 209. The dispute of standard has not been raised within one month of the receipt of the suit notice and for the first time the dispute of standard rent has been taken in the written statement. In the notices exhs 31 and 46 the landlord had not even demanded local tax or education cess. In that view of the matter the case would fall under section 12(3)(a) of the Bombay Rent Act.

#. It was argued before the Appellate Court by the learned advocate for the defendant that the suit notice is vague as there was no specific demand in the notice. However, the plaintiff has stated in the demand notice the exact amount of arrears of rent amounting to Rs. 81/- upto 28.12.1974. Therefore, it cannot be said that here was no specific demand or that the demand notice was vague. In that view of the matter there is no substance in this Revision Application and the same is required to

be dismissed. Accordingly the Revision Application is dismissed. Rule discharged. Ad.interim relief granted earlier stands vacated. No order as to costs.

#. At this stage Ms.D.T.Shah stated that the petitioner-tenant may be granted some time to find out suitable alternative accommodation. In the facts and circumstances I direct that the decree for possession may not be executed till 30.9.2000 on condition that the petitioner shall file a usual undertaking before this court within 8 weeks from today. In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit property to any one and without obstructing in any manner he will hand over the vacant and peaceful possession to the respondent on or before 30.9.2000. The petitioner shall continued to pay the mesne profit regularly during the aforesaid period. If the petitioner fails to file the undertaking within 8 weeks from today or if the petitioner commits any breach of the said undertaking it will be open for the landlord to execute the decree for possession forthwith.

Further order dated 23.3.2000

##. After dictating the judgment in this Civil Revision Application and before it could be transcribed, Mr. S.M.Shah for Ms. D.T.Shah appeared in the matter and filed Misc. Civil Application No. 501 of 2000 requesting the court that since the judgment is not yet signed and since he has got some additional points to be raised, he should be allowed to address the court on additional points.

##. Mr. Nagarkar learned advocate for the respondent submitted that he has no objection if Mr. Shah is allowed to argue some additional points. In that view of the matter by consent of both the sides I have permitted Mr. Shah to argue some additional points.

##. Mr. Shah learned counsel for the petitioner argued that the property in question has already been sold away by the original landlord and therefore, the proceedings have become infructuous However, subsequently he fairly submitted that even in the sale deed the original landlord had assigned all her rights including executing the decree etc. to the new purchaser and therefore, aforesaid point was given up by Mr. Shah. It is therefore, not necessary to examine the said argument in detail. Even otherwise if during the pendency of the petition, the respondent has transferred the property it cannot be said that the proceedings have become

infructuous or that the decree cannot be confirmed on the ground that the original landlord has now no title.

##. In any case since rights have already been assigned and when this court is required to examine whether the decree of the Trial Court which confirmed by the Appellate Court is correct or not, it cannot be said that the proceedings have become infructuous in any manner. Even as per order 21 Rule 16 of the Civil Proc.Code, if the interest of the decree holder in the decree is transferred by assigning her right, the transferee can apply for execution of such a decree and as stated earlier Mr. Shah has confirmed that there is already an assignment by the decree holder in favour of the new purchaser. Therefore, there is no substance in the said contention.

##. It was argued by Mr. Shah that since the tenant was not aware about the fact that the original landlord has sold the property to the present plaintiff , he cannot be said to be negligent in payment of rent and therefore it should be presumed that he is ready and willing to pay the rent as per section 12(1) of the Bombay Rent Act. He has also relied upon the judgment of this court reported in 21 GLR 869 in the case of Udyomal Nathumal and anor. vs. Premchand Trikamdas Baswani . In that case the tenant had fallen sick and was suffering loss in his business and therefore, could not pay the amount of rent and that after the notice he requested the landlord to give installments of arrears of rent and that even the employer of the tenant also gave assurance to the landlord that the tenant will clear the deficit of arrears of rent. In the facts and circumstances of the case it was found by this court that the conduct of the tenant cannot be said to be negligent in so far as payment of rent is concerned. Therefore, this Court ultimately found that no negligence can be attributed to the tenant. However, in the facts and circumstances of the present case, before filing the suit and before giving notice of demand, the landlord had already given notice of attornment exh.46. The attornment notice is on record which is prior to the issuance of suit notice. There is nothing on record to show that he has offered rent to the previous owner. The tenant has not even replied to the notice. Therefore, he has failed to pay up the arrears of rent. From the evidence on record therefore, it is clear that the defendant tenant was negligent and was not interested in payment of rent at all.

##. Mr. Shah next argued that the landlord has demanded

arrears of rent within 4 days in the suit notice. According to him, since the tenant is entitled to pay the amount of rent within one month from the receipt of the suit notice, the demand of payment of rent within 4 days is illegal. There is absolutely no substance in this argument. In 21 GLR 371 Sakerlal Nathubhai and ors. vs. Chhotubhai Navalbhai the Division Bench of this Court has held that if the rent is demanded within four days on receipt of the notice, such a notice cannot be said to be invalid on the ground that the rent is demanded in a shorter period. What is required by law is that no suit for arrears of rent can be filed within a period of one month after the notice of such demand is served on the tenant. In the present case the suit is filed after the period of one month after the notice of demand was served on the tenant. There is therefore, absolutely no substance in the argument of Mr. Shah.

##. Mr. Shah thereafter argued that the suit notice is vague as there is no proper demand in the same. Mr. Shah has relied upon the judgment of this court reported in 18 GLR 77 in the case of Bapulal Kalidas (since deceaed by his Heirs) & ors. vs. Bai Kashiben Wd/o Chimanlal Chhaganlal . In that case in the demand notice, it was stated that the tenant was in arrears of more than 6 months. No particulars about the arrears of rent was given in the suit notice. In the facts of the case, therefore, it was found that the aforesaid notice was vague as there was no specific amount stated in the notice or the period from which the rent was due. In the instant case, there is a specific demand of Rs. 81/towards the arrears of rent . It is clearly stated that the tenant is in arrears of rent upto 29.12.74 and Rs. 81/- is due towards the arrears of rent. In that view of the matter, it cannot be said that the suit notice is vague in any manner. There is specific demand of arrears of rent in the suit notice and therefore, naturally the tenant was aware of the exact amount which he was required to pay towards the arrears of rent. Therefore, there is no substance in the said argument of Mr. Shah.

##. It was lastly argued that even if there is a failure on the part of the tenant to tender the correct rent, same cannot be taken as wilful default in payment of rent. Aforesaid submission was made in view of the judgment of the Supreme Court reported in the case of Chandramohan vs. Sengottaiyan & ors AIR 2000 SC 568 . In the facts and circumstances of that case it was found by the Supreme Court that the eviction petitions were not filed on the ground of non payment of rent for any

specified period but the same were filed on the ground that the rent as claimed by the appellant was not paid as is justified by the recitals in the eviction petitions. In the facts of the case it was found by the High Court that thee was no wilful default on the pat of the tenant in payment of the rent and accordingly it was found by the High Court that the tenant had not committed any wilful default of payment of rent. Aforesaid finding of the High Court was confirmed by the Supreme Court. So far as the facts of the pesent case is concerned, correct amount of rent was demanded which was not tendered within one month by the tenant and therefore, decree for eviction under section 12(3)(a) was rightly passed. In that view of the matter there is no substance in any of the arguments of Mr. Shah.

##. Earlier I had already granted time to the petitioner to vacate the suit premises. However, Mr. Shah has now requested that longer time may be granted as the financial condition of the petitioner is very weak and his younger son is likely to settle after completion of his studies within two years. In view of the aforesaid position and looking to the facts and circumstances of the case, the decree for possession may not be executed upto 31.3.2001. Aforesaid time is given for vacating the suit premises on condition that the petitioner shall file a usual undertaking before this court on or before 30.4.2000. If the aforesaid undertaking is not filed within the stipulated time it will be open for the landlord to execute the decree forthwith. It will also be open for the landlord to execute the decree if there is any breach of the said undertaking in any manner at any subsequent stage.

(P.B.Majmudar.J)

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